

November 26, 2007

Ms. Margaret Waters  
P.O. Box 209  
Bethel, DE 19931

**RE: Freedom of Information Act Complaint  
Against Town of Bethel**

Dear Ms. Waters:

On September 28, 2007, our Office received your complaint alleging that the Town of Bethel ("the Town") violated the public record requirements of the Freedom of Information Act, 29 *Del. C.* Ch. 100 ("FOIA"), by not providing you with a copy of the "'Amendment to Chapter 2 – Buildings,' of the town ordinances for the Town of Bethel, which was shown at the August 7, 2007 town meeting."

By letter dated October 1, 2007, our Office asked the Town to respond to your complaint in writing by October 10, 2007. We received the Town's response by facsimile on October 10, 2007.

According to the Town, at a meeting on August 7, 2007 the Town Council discussed "a proposed amendment to an ordinance which had been enacted by the Town of Bethel on January 7, 2003. The Town attached a copy of that ordinance (Amendment to Chapter 2 – Buildings) to its response to your FOIA complaint. The Town acknowledges that you "made a verbal request for a copy of the ordinance to Bill Rutledge, a member of the Town Council" and that you followed up

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your request with an e-mail to Mr. Rutledge on August 21, 2007 and "sent a letter to Mr. Rutledge by certified mail which was delivered September 12, 2007."

According to the Town, however, it made several unsuccessful efforts to provide you with a copy of the ordinance you requested.

Mr. Rutledge contends that he went to [your] house to deliver the document to [you] on August 20<sup>th</sup>, but that there was no answer at the door. He also contends that this attempt was within 10 days of [your] verbal request to him for a copy of the ordinance. He also contends that he has tried to call [you] on the telephone, but that [you have] an unlisted phone number, and that he has tried to respond to [you] by e-mail but that his e-mail responses are always rejected for some reason. Ms. Waters moved out of her house in Bethel, and has not provided a forwarding address. Mr. Rutledge had copies of the ordinance requested by Ms. Waters at the October 2, 2007 Town Meeting, and was prepared to deliver them to [you], but Ms. Waters did not attend.

#### **RELEVANT STATUTES**

FOIA requires that "[a]ll records shall be open to inspection and copying by any citizen of the State during regular business hours by the custodian of the records for the appropriate public body." 29 *Del. C.* §10003(a). "Reasonable access to and reasonable facilities for copying of these records shall not be denied to any citizen." *Id.*

### **LEGAL ANALYSIS**

You contend that the Town did not provide you with reasonable access to the ordinance you requested because you made a verbal request for a copy on August 7, 2007 and, as of the date of your FOIA complaint to our Office (September 25, 2007), seven weeks had passed. According to your complaint, a copy of the ordinance "may be essential to my complaints against my builder and therefore time is of the essence. I truly feel that forty-nine days are too long for someone to wait when things are this important and may have a heavy impact on another's life."

"Delaware's FOIA is silent on how quickly a public body must respond to a public records request, other than to require 'reasonable access.'" *Att'y Gen. Op.* 06-IB13 (June 23, 2006) (quoting *Att'y Gen. Op.* 03-IB26 (Nov. 13, 2003)). "Our Office has adopted a ten-day 'rule of thumb,' which may be extended for practical reasons. 'The normal ten-day guideline is at most a 'safe harbor' meaning that a custodian who complies with a records request within ten days is presumptively acting without unreasonable delay.'" *Att'y Gen. Op.* 06-IB13 (quoting *Att'y Gen. Op.* 03-IB13)).

In *Att'y Gen. Op.* 03-IB13, our Office determined that the ten-day normal response time under FOIA "is exclusive of weekends and legal holidays. . . . In addition, just as the courts do not count the day of filing, the time-line for a FOIA request begins the next business day after the public body received the request."

According to your complaint, on August 7, 2007 you made a verbal request for a copy of the Town's Amendment to Chapter 2 – Buildings ordinance. According to the Town, Mr. Rutledge tried to deliver a copy of the ordinance to your home on August 20, 2007 but there was no answer at the

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door.<sup>1</sup> Under the ten-day rule, the Town had until August 21, 2007 (excluding weekends) to respond to your FOIA request. Our Office believes that the Town made a good faith effort to comply with your request within ten days.

According to the record, the Town made several other attempts after August 20, 2007 to contact you to arrange for delivery or for your to pick up of a copy of the ordinance you requested. It appears, however, that there were a number of miscommunications which were not the fault of any one. To resolve this issue once and for all, our Office encloses with this letter a copy of the ordinance you requested which the Town attached to its response to your FOIA complaint.

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<sup>1</sup> It is not clear why Mr. Rutledge did not leave a copy of the ordinance in your mail box or slip it under your door, but he may have wanted you to sign a receipt which is a customary practice of many public bodies.

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**CONCLUSION**

For the foregoing reasons, our Office determines that the Town did not violate the public record requirements of FOIA. The Town made a good faith effort to try to deliver a copy of the ordinance you requested to your home on August 20, 2007, within the ten-day safe harbor under FOIA. To avoid any further miscommunications between you and the Town, our Office is enclosing a copy of the Town's ordinance, Amendment to Chapter 2 – Buildings.

Very truly yours,

W. Michael Tupman, Esquire  
Deputy Attorney General

APPROVED

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Lawrence W. Lewis, Esquire  
State Solicitor

Enclosure

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cc: The Honorable Joseph R. Biden, III  
Attorney General

Richard S. Gebelein, Esquire  
Chief Deputy Attorney General

Keith R. Brady, Esquire  
Assistant State Solicitor

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Town Attorney

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